

AMENDED IN ASSEMBLY AUGUST 24, 2004

AMENDED IN ASSEMBLY AUGUST 18, 2004

AMENDED IN ASSEMBLY JULY 23, 2004

AMENDED IN ASSEMBLY JUNE 23, 2004

AMENDED IN SENATE MAY 4, 2004

SENATE BILL

No. 1538

Introduced by Senator Alarcon

(Coauthors: Assembly Members Chan and Koretz)

February 19, 2004

An act to amend Section 226.7 of, ~~and to add Sections 201.9 and 512.7 to,~~ the Labor Code, relating to compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1538, as amended, Alarcon. Compensation: meal and rest periods: ~~payment of discharged employees.~~

Existing law prohibits an employer from requiring an employee to work during any meal or rest period mandated by an order of the Industrial Welfare Commission and establishes penalties for an employer's failure to provide a mandated meal or rest period.

This bill would require employers to pay employees for any rest period mandated by statute, regulation, or order of the Industrial Wage Commission and would establish the formula by which the rate of pay *should be determined for the rest periods of piece rate workers' rest periods should be determined workers in the agricultural and garment industries*, as specified. ~~This bill would permit parties in the transportation industry to establish by a collective bargaining~~

agreement an off-duty meal period and an on-duty meal period, where the agreement also provides for a premium rate for overtime hours and a specified regular hourly rate.

Existing law provides generally that wages earned and unpaid at the time an employee is discharged are due and payable immediately.

This bill would permit the parties to a collective bargaining agreement in the live theatrical and concert entertainment industry to establish by express terms in their agreement the time limits for payment of wages to an employee who is discharged or laid off.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2 ~~following:~~

3 ~~(a) It has been the long-standing policy of the State of~~
4 ~~California to consider rest periods mandated by orders of the~~
5 ~~Industrial Welfare Commission as time worked for which there~~
6 ~~shall be no reduction in pay.~~

7 ~~(b) The clear purpose of this policy is to ensure that no~~
8 ~~employee, regardless of industry or method of pay, suffers a net~~
9 ~~loss of wages when taking rest periods mandated by law.~~

10 ~~(c) Since the enactment of statutory provisions that require~~
11 ~~employers to pay premium pay to employees as compensation for~~
12 ~~failing to provide them with a rest period in accordance with an~~
13 ~~applicable order of the Industrial Welfare Commission, some~~
14 ~~employers have denied employees working on a piece rate basis~~
15 ~~equivalent protection to hourly workers with respect to full~~
16 ~~compensation for rest periods.~~

17 ~~(d) This employer practice unfairly discriminates against piece~~
18 ~~rate employees and discourages them from taking rest periods,~~
19 ~~which are integral to maintenance of a healthy and safe workplace.~~

20 ~~(e) It is therefore in the public interest to clarify that the benefits~~
21 ~~of rest periods mandated by law are fully extended to all affected~~
22 ~~employees, including piece rate workers. The purpose of this act~~
23 ~~is to ensure that piece rate workers are not penalized for taking rest~~
24 ~~periods.~~

25 ~~(f) It is also in the public interest to clarify that penalties arising~~
26 ~~under Section 203 of the Labor Code do not apply to an employer's~~

~~failure to pay an employee compensation required by Section 226.7 of the Labor Code for meal and rest periods unless the employer has failed to pay the employee compensation of this kind on more than five occasions in a 12-month period. Section 203 penalties are appropriate only for repeat violators of meal and rest period requirements.~~

~~SEC. 2.—~~ Section 201.9 is added to the Labor Code, to read:

~~201.9.— Notwithstanding subdivision (a) of Section 201, where employees in the live theatrical and concert entertainment industry are enrolled in and routinely dispatched to employment through a hiring hall or other system of regular short-term employment established in accordance with a bona fide collective bargaining agreement, they and their employers may establish by express terms in their collective bargaining agreement the time limits for payment of wages due to an employee who is discharged or laid off.~~

~~SEC. 3.—~~

~~SECTION 1.~~ Section 226.7 of the Labor Code is amended to read:

226.7. (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is ~~not provided. The penalties arising under Section 203 do not apply to an employer who fails to pay compensation required by this section unless the employer has failed to do so more than five times in a 12-month period.~~ *not provided.*

(c) Rest periods mandated by any applicable statute, regulation, or order of the Industrial Welfare Commission shall be counted as hours worked for which there shall be no deduction of wages. Employees working on a piece rate basis *in the agricultural and garment industries* shall be compensated for rest periods as follows:

(1) The employer shall determine the total amount of piece rate earnings for any pay period in which the employee was paid by piece rate.

(2) The employer shall determine the total amount of time worked by the employee during the pay period.

(3) The employer shall use the amount established under paragraph (1) and the total time worked under paragraph (2) to determine the average pay rate applicable to rest periods in that pay period, which in no event may be below the minimum wage. The employer shall pay this amount to the piece rate employee as part of his or her regular pay.

(4) This subdivision shall not be construed to require an employer to compensate a piece rate employee *in the agricultural and garment industries* for rest periods during any pay period in which the employee's gross piece rate pay, averaged on an hourly basis, is more than forty-one dollars (\$41.00) per hour. The Division of Labor Statistics and Research shall adjust this hourly rate on October of each year, effective January 1 of the following year, by an amount equal to the percentage increase in the California Consumer Price Index.

~~SEC. 4. Section 512.7 is added to the Labor Code, to read:~~

~~512.7. (a) In the transportation industry, the parties to a valid collective bargaining agreement covering commercial drivers may establish, by the express terms of that agreement, the following:~~

~~(1) An off-duty meal period that commences after no more than six hours of work.~~

~~(2) The circumstances under which commercial drivers may qualify for an on-duty meal period.~~

~~(b) Except as to terms that the parties establish pursuant to subdivision (a), employers in the transportation industry shall provide off-duty and on-duty meal periods in accordance with Section 512 and the applicable provisions of Wage Order 9 of the Industrial Welfare Commission.~~

~~(c) The provisions of this section apply only if the collective bargaining agreement covering commercial drivers provides for premium wage rates for all overtime hours worked and a regular hourly rate of pay for commercial drivers of not less than 30 percent more than the state minimum wage.~~